

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CONTEMPT PETITION NO.479 OF 2013

Abdul Khalid Abdul Chataiwala

... Petitioner

V/s.

J.W.C. Logistics Park Pvt. Ltd. & Ors.

...Respondents

Mr. Prashant D. Patil for the Petitioner

Mr. Girish Uttangale for the Respondents.

CORAM: K.K. TATED, J.
DATED : APRIL 21, 2015

PC. :

1. Heard the learned counsel for the parties. This petition is preferred by the Plaintiff alleging that the Respondent Defendant violated the order dated 17/10/2008 passed by this court in Appeal from Order No.578/2008 by mortgaging the suit property by mortgage deed dated 17/01/2013 with the State Bank of India, Industrial Finance Branch, Andheri and obtained huge loan of Rs.97 crores and as such they created third party right, title and interest in respect of the suit property. Hence, they may be dealt with as per the provisions of the Contempt of Courts Act.

2. The learned counsel for the Respondents submits that initially this court passed order dated 17/10/2008 recording a statement made by the Respondents that they will not sell or dispose of the suit property without giving the Petitioner's Advocate in Trial Court prior notice of at

least 4 weeks. He submits that thereafter the Petitioner preferred Civil Application No.1527/2008 for modification of the order dated 17/10/2008 incorporating the work “mortgage”. Prayer clauses of the said Civil Application read thus:

“a. The order dated 17.10.2008 be modified by incorporating the terms of mortgage and parting with possession of the suit property so as to restrain the Respondents from mortgaging or parting with possession of the suit property.

b. Such further and necessary reliefs be granted and orders be passed as this Hon'ble Court deem fit and proper in facts and circumstances of the case so as to protect the Appellant's property.”

3. He submits that that Civil Application was dismissed by this court (Coram : R. S. Mohite, J.) by order dated 07/09/2009. He submits that in view of subsequent development, there is no breach on the part of the Respondents to say that they violated the order dated 17/10/2008. Hence, there is no substance in the contempt petition. Same be dismissed with costs.

4. It is to be noted that in the present proceedings, the Petitioner alleges that in violation of the order dated 17/10/2008 the Respondent executed mortgage deed 17/01/2013 mortgaging the suit property with the State Bank of India. The Petitioner preferred Civil Application No.1527/2008 for modification of the order dated 17/10/2008 incorporating the work “mortgage” which was dismissed by this court vide order dated 07/09/2009. Said order reads thus:

“This is an Application for modification of the order dated 17.10.2008. It is seen that the order was passed on the basis of the statement made on behalf of the Respondents. In terms of the said statement, order is also made in terms of the statement against the remaining Respondents. Limited liberty to apply was given. The relief which is now sought in the Civil Application seeks to expand the nature of the statement. That cannot be permitted. Hence, Civil Application rejected.”

5. Considering the fact that this court, by order dated 07/09/2009 specifically held that by order dated 17/10/2008 this court restrained the Respondents from selling the suit property, there is no question of restraining the Respondents from mortgaging the said property. In view of these facts, I do not find any substance in the contempt petition. Same stands dismissed.

(K.K. TATED, J.)